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| 10/748,953 | 12/30/2003 | Mary Rose Rice | 14177-1600 | 7896 |

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| EXAMINER |
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CASCHERA, ANTONIO A

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| ART UNIT | PAPER NUMBER |
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2628

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06/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--|--|--|
| Office Action Summary | Application No. 10/748,953 | Applicant(s) RICE, MARY ROSE | |
| | Examiner Antonio A. Caschera | Art Unit 2628 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 12-15 is/are rejected.
- 7) ☒ Claim(s) 7 and 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 08/11/06.

Claim Objections

2. Claims 1-8 and 10-15 are objected to because of the following informalities:
 - The phrase, “paint sample cards” found throughout the claims should be changed to “physical paint sample cards” to be consistent with the latest amendment to the claims.
 - The phrase, “a second plurality of white paint color sample cards” (see 2nd to last line of claim 12), should be replaced with, “a plurality of physical white paint color sample cards” in order to be consistent with the current claim language of claim 12. Further note, the word “second” should be omitted from the phrase as there is no first plurality of “white paint color sample cards” recited in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6, 8, 10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spangler (U.S. Patent 6,270,123 B1) in view of Wright et al. (U.S. Pub 2004/0046802 A1).

In reference to claim 1, Spangler discloses an improved color display and selection system configuring a plurality of individual color stripes positioned in a side-by-side relation on an elongated paper strip (see columns 3-4, lines 66-3). Spangler discloses these elongated strips assembled in a two-dimensional physical display rack directed towards selection of architectural coatings, interior and exterior (see column 4, lines 42-48, column 1, lines 12-20 and Figure 11). Spangler discloses selecting an arbitrary starting point in the color spectrum for selecting colors to arrange the colors of the visible color spectrum (see column 6, lines 55-61). Spangler explicitly discloses placing the selected colors on a first, second, third and fourth plurality of physical color strips (see columns 7-8, lines 31-6). Spangler discloses each physical color strip to comprise of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50). Spangler also discloses arranging the first, second third and fourth color strips on the display rack according to hue and lightness (see column 8, lines 7-29 and Figure 8). Spangler discloses the first, second, third and fourth color strips to be arranged on the display rack so that colors vary gradually in hue in a first direction and gradually in lightness in a second direction (see column 8, lines 7-29, column 4, lines 29-65). Note, Spangler discloses that rows are arranged according to hue and columns of strips on the display rack are arranged according to lightness (see column 8, lines 7-29). Although Spangler does disclose each color strip comprising of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50 and Figure 9A), Spangler does not explicitly disclose the color strips including a single color. At the time the

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invention was made, it would have been obvious to one of ordinary skill in the art to implement the display rack and color selection techniques of Spangler utilizing color strips, one color per strip. Applicant has not disclosed that specifically implementing one color per physical color card provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the plurality of colors per strip display and selection techniques of Spangler because the exact content of each paint card of Applicant's claims is seen as a matter decided upon by the inventor and to which best suits the Application at hand. The Office sees such a limitation providing no immediate criticality to the invention at hand since it is the exact configuration of the hue, saturation and value of each color on the display unit which the Office sees as the true invention. Therefore, it would have been obvious to one of ordinary skill in this art to modify Spangler to obtain the invention as specified in claim 1. Although Spangler does disclose the first, second, third and fourth color strips arranged on the display rack so that colors vary gradually in hue in a first direction and gradually in lightness in a second direction (see column 8, lines 7-29, column 4, lines 29-65), Spangler does not explicitly disclose arranging the color strips in the second direction by chroma. Wright et al. discloses a color selection system by which the user of the system may generate a palette of colors for use in a color coordinated project (see paragraph 1). Wright et al. discloses the system to comprise of a graphical user interface having a first display area for displaying colors available for selection and a second area for displaying selected colors forming a palette of colors (see paragraph 8, lines 1-4). Wright et al. discloses the system to implement a color map display mode where a palette is displayed on the display according to hue in a one direction (horizontally) and chroma in another

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direction (vertically) (see paragraph 45, lines 1-9, paragraph 40, paragraph 48 and #110, 150, 152 of Figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the harmonious color displaying techniques of Wright et al. with the color strip displaying and selection techniques of Spangler in order to provide a user of the display selection system a more intuitive, easier way to select colors by organizing colors in such a way that they are harmonious to one other showing closely related colors (see paragraphs, 8, 9 and 29) as they are perceived by the human eye.

In reference to claim 2, Spangler and Wright et al. disclose all of the claim limitations as applied to claim 1 above in addition, Spangler discloses arranging the colors into categories pastel, tint, deep and accent bases (see columns 9-10, lines 5-17). Wright et al. explicitly discloses arranging the colors of the palette into categories, principal, intermediate and finer hues, based on hue angles (or hue colors) (see paragraph 40, last 15 lines and #150 of Figure 3, column headers start with R=Red, to Y=yellow, to G=green etc).

In reference to claim 3, Spangler and Wright et al. disclose all of the claim limitations as applied to claim 2 above. Note, the Office interprets that Spangler inherently allows for adding physical strips to a category based on human input since the display strips are placed in a display rack categorized in bases (see column 7, lines 31-41, columns 9-10, 5-17) and are initially stocked and maintained (see column 8, lines 30-47).

In reference to claim 4, Spangler and Wright et al. disclose all of the claim limitations as applied to claim 2 above. Wright et al. explicitly discloses arranging the colors of the palette into categories, principal, intermediate and finer hues, based on hue angles (or hue colors) (see paragraph 40, last 15 lines and #150 of Figure 3, column headers start with R=Red, to Y=yellow,

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to G=green etc). Wright et al. discloses the colors arranged in each hue angle by decreasing chroma starting from the top of the column heading towards the bottom (see paragraph 48 and Figure 3, #152, 1/16 to 1/0).

In reference to claim 5, Spangler and Wright et al. disclose all of the claim limitations as applied to claim 1 above. Note, Spangler discloses that rows are arranged according to hue and columns of strips on the display rack are arranged according to lightness (see column 8, lines 7-29) and that the color strips inherently comprise of “tints” of white color since the “sorting” by lightness of color strips is performed column by column for all colors of the visible spectrum (see column 6, lines 55-61).

In reference to claims 6 and 14, Spangler and Wright et al. disclose all of the claim limitations as applied to claims 1 and 12 respectively. Although Spangler discloses each physical color strip to comprise of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50), neither Spangler nor Wright et al. explicitly disclose each sample card having two or more paint colors having similar hue but varying or different chromatic values. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to implement the display rack and color selection techniques of Spangler utilizing color strips composed of colors having similar hue but varying chroma. Applicant has not disclosed that specifically implementing physical color cards comprising colors of similar hue and varying chroma provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the plurality of colors per strip, arranged with varying hue and lightness, display and selection techniques of Spangler because the exact content of each paint card of

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Applicant's claims is seen as a matter decided upon by the inventor and to which best suits the Application at hand. In other words, some inventors may perceive colors varying closely in chroma as a better facilitation for user selection than colors varying closer in hue and therefore may choose to arrange colors by hue instead of chroma. Therefore, it would have been obvious to one of ordinary skill in this art to modify Spangler to obtain the invention as specified in claim 6.

In reference to claims 8 and 12, Spangler discloses an improved color display and selection system configuring a plurality of individual color stripes positioned in a side-by-side relation on an elongated paper strip (see columns 3-4, lines 66-3). Spangler discloses these elongated strips assembled in a two-dimensional physical display rack directed towards selection of architectural coatings, interior and exterior (see column 4, lines 42-48, column 1, lines 12-20 and Figure 11). Spangler discloses selecting an arbitrary starting point in the color spectrum for selecting colors to arrange the colors of the visible color spectrum (see column 6, lines 55-61). Spangler explicitly discloses placing the selected colors on a first, second, third and fourth plurality of physical color strips (see columns 7-8, lines 31-6). Spangler discloses each physical color strip to comprise of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50). Spangler also discloses arranging the first, second third and fourth color strips on the display rack according to hue and lightness (see column 8, lines 7-29 and Figure 8). Spangler discloses the first, second, third and fourth color strips to be arranged on the display rack so that colors vary gradually in hue in a first direction and gradually in lightness in a second direction (see column 8, lines 7-29, column 4, lines 29-65). Note, Spangler discloses that rows are arranged according to hue and columns of strips on the display rack are arranged according to

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lightness (see column 8, lines 7-29) and that the color strips inherently comprise of “tints” of white color since the “sorting” by lightness of color strips is performed column by column for all colors of the visible spectrum (see column 6, lines 55-61). Although Spangler does disclose the first, second, third and fourth color strips arranged on the display rack so that colors vary gradually in hue in a first direction and gradually in lightness in a second direction (see column 8, lines 7-29, column 4, lines 29-65), Spangler does not explicitly disclose arranging the color strips in the second direction by chroma. Wright et al. discloses a color selection system by which the user of the system may generate a palette of colors for use in a color coordinated project (see paragraph 1). Wright et al. discloses the system to comprise of a graphical user interface having a first display area for displaying colors available for selection and a second area for displaying selected colors forming a palette of colors (see paragraph 8, lines 1-4). Wright et al. discloses the system to implement a color map display mode where a palette is displayed on the display according to hue in a one direction (horizontally) and chroma in another direction (vertically) (see paragraph 45, lines 1-9, paragraph 40, paragraph 48 and #110, 150, 152 of Figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the harmonious color displaying techniques of Wright et al. with the color strip displaying and selection techniques of Spangler in order to provide a user of the display selection system a more intuitive, easier way to select colors by organizing colors in such a way that they are harmonious to one other showing closely related colors (see paragraphs, 8, 9 and 29) as they are perceived by the human eye.

In reference to claim 10, Spangler and Wright et al. disclose all of the claim limitations as applied to claim 8 above. Spangler discloses each physical color strip to comprise of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50).

In reference to claim 13, Spangler and Wright et al. disclose all of the claim limitations as applied to claim 12 above. Spangler discloses each physical color strip to comprise of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50). Spangler discloses selecting an arbitrary starting point in the color spectrum for selecting colors to arrange the colors of the visible color spectrum (see column 6, lines 55-61). Wright et al. discloses the system to implement a color map display mode where a palette is displayed on the display according to hue in a one direction (horizontally) and chroma in another direction (vertically) (see paragraph 45, lines 1-9, paragraph 40, paragraph 48 and #110, 150, 152 of Figure 3).

In reference to claim 15, Spangler and Wright et al. disclose all of the claim limitations as applied to claim 12 above. Spangler discloses each physical color strip to comprise of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50). Wright et al. explicitly discloses arranging the colors of the palette into categories, principal, intermediate and finer hues, based on hue angles (or hue colors) (see paragraph 40, last 15 lines and #150 of Figure 3, column headers start with R=Red, to Y=yellow, to G=green etc). Note, the Office interprets the combination of Spangler and Wright et al. to disclose the claim limitations of claim 15 noting that the hue ranges of Wright et al. (R, Y, YR, G etc) do not overlap one another.

Allowable Subject Matter

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4. Claims 7 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. The cancellation of claim 9 is noted.

6. Applicant's arguments, see Applicant's Remarks filed 01/24/07, with respect to petition to withdraw the restriction requirement upon claims 1-15 have been fully considered and are persuasive. The restriction requirement of claims 1-15 has been withdrawn. Claims 1-15 (noting the cancellation of claim 9) are therefore being examined herein.

7. Applicant's arguments, see Applicant's Remarks, filed 01/24/07 and 08/11/06, with respect to the rejection(s) of claim(s) 1-15 under 35 USC 102(b) and 103(a), in view of the Microsoft Photodraw reference, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Spangler and Wright et al..

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Antonio Caschera whose telephone number is (571) 272-7781. The examiner can normally be reached Monday-Thursday and alternate Fridays between 7:00 AM and 4:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung, can be reached at (571) 272-7794.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

571-273-8300 (Central Fax)

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (571) 272-2600.

aac
AKC
6/7/07

Antonlo Caschera
Patent Examiner



KEE M. TUNG
SUPERVISORY PATENT EXAMINER